

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

TOWN OF BARNSTEAD, N.H.

DECISION OF THE HEARING OFFICER

Appearances: Mark Puffer Esq., Attorney for the Employer

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation time

Employer: Town of Barnstead, N.H., 106 South Barnstead Road, Barnstead, NH
03225

Date of Hearing: May 29, 2014

Case No. 47541

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on February 12, 2014. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on May 1, 2014. The Wage Claim is for \$755.32 in unpaid vacation time.

The claimant testified that he had been the Fire Chief for the Town of Barnstead (Employer). The claimant retired from the Town as the Chief. The claimant testified that Fire Department employees were allowed to carry over 96 hours of vacation time into the following year. The claimant was a 40 hour per week employee (four days at 10 hours a day).

The members of the fire department worked 48 hours per week in determined shift schedules. The Chief stated that he worked 40 hours per week from the start of his employment to his retirement. He testified that the Town policy was clear that Fire Department employees carried over the 96 hours. When he retired he was paid out for 80 hours of carry over and not the 96 that was in the Town policy.

The Town presented the argument that the Chief was an administrative employee who worked a completely different schedule from the employees of the Fire Department. The

claimant was never told that he could carry over 96 hours as he was a 40 hour employee who received accrued time on the basis of eight hours a day and forty hours per week. The Fire Department employees worked two twenty-four hour shifts in the work week. The Chief's time was not calculated the same as a line firefighter.

The position of Chief was in the Town structure but not as a Fire Department employee. His was a salaried position in the Town's organizational structure. The Town feels that the Chief was paid out all that was due upon retirement.

FINDINGS OF FACT

RSA 275:43 I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This part of the law mandates that an employer pay an employee all wages due at the time the wages are due and owing.

RSA 275:43 V. Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as vacation time into the category of wages when the time is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

The Town provided credible testimony that even though the claimant was the Fire Chief he did not work the same hours or schedule as the line firefighters. The Chief's schedule and the earning of leave did not match the other members of the Fire Department. It was clear to this Hearing Officer that the position of Fire Chief was attached to the Town Administrators more so than the rank and file firefighters.

The claimant did not prove that even though he was the Fire Chief that he fell under the ninety-six hour carry over instead of the eighty hour carry over.

The Wage Claim is invalid.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

/s/

Thomas F. Hardiman
Hearing Officer

Date of Decision: June 19, 2014

Original: Claimant
cc: Employer

TFH/clc